

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

AMERICAN CIVIL LIBERTIES UNION OF
MASSACHUSETTS and LAWYERS FOR
CIVIL RIGHTS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, IMMIGRATION
AND CUSTOMS ENFORCEMENT,

Defendants.

C.A. No. 19-12564-MBB

DEFENDANTS' STATUS REPORT

Pursuant to this Court's June 15, 2020, Order, Defendants U.S. Immigration and Customs Enforcement ("ICE") and United States Department of Homeland Security's Office of Intelligence and Analysis (I&A) (collectively, "Defendants"), submit this status report.

I. ICE

Plaintiffs have requested and sued upon, two separate and broad Freedom of Information Act ("FOIA") requests. The first set of documents produced by ICE was on or about April 9, 2020, in response to Plaintiff's second FOIA request, number (2) of that request, which seeks documents relating to the Warrant Service Officers' program ("WSO"), requesting "All Memoranda of Agreement and other contracts executed by ICE in connection with the WSO program, including with any state or local government entity."

ICE has completed its searches for the other documents in Plaintiffs' WSO request and for number (10) of Plaintiff ACLU's first FOIA request. Plaintiff ACLU designates its first

FOIA request as its “Gang Profiling Request.” ICE has located 5,460 pages of documents that are potentially responsive to these requests. ICE will process 500 pages of documents that appear to be responsive to these requests and produce to Plaintiff ACLU the disclosable documents on or before June 30, 2020. ICE will process and produce 500 pages a month of these documents until production is completed, estimated to occur in April 2021. Because most of the document requests seek sensitive law enforcement documents, processing of the requested documents is a laborious process involving a number of levels of review and release authorization.

During the administrative appeal process ICE objected to the very broad scope of the document requests in the first FOIA request, the “Gang Profiling Request” and continues to object to the broad scope of the request as drafted by Plaintiff, with the exception of item 10 of the Gang Profiling Request. ICE has repeatedly asked Plaintiff to clarify what records it is seeking concerning the Gang Profiling FOIA request. On June 9, 2020, ICE submitted a proposed narrowing of the Gang Profiling FOIA request to Plaintiffs in efforts to start a constructive discussion with Plaintiffs to identify with more specificity the records Plaintiffs are seeking. In response, Plaintiff agreed to ICE’s narrowing proposal as an interim matter but reserved the right to insist on a production responding to the request as drafted. That response is inadequate; ICE requests that if Plaintiff has reservations about ICE’s narrowing suggestion, that Plaintiff identify exactly what it is looking for so that ICE can search for specific documents and not conduct a massive broad search and, indeed, conduct repeated searches.

For example, Plaintiff ACLU’s Gang Profiling requests lack information sufficient to identify record custodians or limitations on which parties ICE should task to conduct searches, as well as dates. ICE looks forward to working with Plaintiffs, but this is a very large project and

Plaintiff seem to focus on timelines for completion of productions and Vaughn indexes when ICE hasn't even determined which records would be responsive because Plaintiff's request is so vague. As to request number 7, the request for Operation Matador documents, Plaintiff has suggested narrowing request number 7 to include "only documents that contain the search terms "Matador" and ("school" or "HS" or "BPS" oston" or "Massachusetts"). This is a narrowing that is helpful to ICE, and ICE is hopeful that Plaintiff will work with it on similar narrowing of the other requests.

To date, ICE has not received any further suggestions for narrowing the outstanding items of Plaintiff's Gang Profiling FOIA request other than to say, as noted, that it will accept ICE's narrowing suggestions on an interim basis. ICE requests that Plaintiff commit to the narrowing that ICE has suggested or be amenable to developing narrowed searches. If the Parties are able to discuss and come to agreement on narrowed search parameters, ICE's search will be more focused, which will reduce the number of pages collected during the search and expedite the production process. .

To the extent that Plaintiff is willing to provide and/or agree to specificity as to the records it is seeking, such as identifying a particular operations, a particular gang, reasonable time frames, search custodians, key words to search etc., the faster ICE can execute the searches, review, and produce documents.

II. DHS INTELLIGENCE AND ANALYSIS (I&A)

The DHS Office of Intelligence and Analysis does not have documents in response to Plaintiffs' second, WSO, FOIA request. I&A has so far identified 296 pages of documents that are responsive to Plaintiff ACLU's First Request ("Gang Profiling Request"). It produced 99 pages to Plaintiff on or about June 9, 2020. 197 pages are ICE documents in the possession of

I&A, and I&A has referred these documents to ICE for review and appropriateness of release.

I&A expects that its next production of documents will occur on or before June 30, 2020. Its goal is to process 250-300 pages a month and to complete its production in September¹

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that this document will be filed through the electronic filing system of the Court, which system will serve counsel for Plaintiffs electronically, on this 24th day of June 2020.

/s/ Anita Johnson
Assistant United States Attorney

¹ As previously noted, the shutdown of the government due to the Covid 19 pandemic has substantially increased the amount of time required to responses to Plaintiffs' FOIA requests as well as all FOIA requests.